



January 7, 2002

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Implementation of the Cable Television Consumer Protection And  
Competition Act of 1992, CS Docket No. 01-290

Dear Ms. Salas:

The Satellite Broadcasting and Communications Association (“SBCA”)<sup>1</sup>, pursuant to Section 1.415 of the Rules of the Federal Communications Commission (the “FCC” or “Commission”),<sup>2</sup> hereby submits this letter in response to the Notice of Proposed Rulemaking (the “NPRM”) issued by the Commission on October 18, 2001, in the above-captioned matter.<sup>3</sup>

The SBCA is submitting this letter in support of certain comments filed in this proceeding on December 3, 2001. Several commenting parties requested that the Commission extend the current statutory prohibition against exclusive contracts for satellite cable or broadcast programming between cable operators and vertically integrated programmers. Many of these commenters also requested that the FCC close the loophole in the law that, along with the other program access rules, generally have enabled circumvention of the exclusivity prohibition by the distribution of programming terrestrially, instead of via satellite.

The SBCA credits the program access rules, which were created by the 1992 Cable Act,<sup>4</sup> with helping DBS to become the only viable competitor to cable services. The rules require that vertically-integrated programmer/cable companies sell their programming to all multichannel video programming distributors (MVPDs) at non-discriminatory prices, terms, and conditions. This provision allows the DBS platform providers to offer comparable programming

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<sup>1</sup> The SBCA is the national trade association that represents the various industry sectors that are engaged in the delivery of television, radio and broadband services directly to consumers via satellite. The members of the Association include the C-Band and Direct Broadcast Satellite (DBS) carriers and distributors that provide television programming and broadband service directly to consumers; the programming services that offer entertainment, news and sports to consumers over satellite platforms; satellite equipment manufacturers and distributors; and satellite dealers and retail firms that sell systems directly in the consumer marketplace.

<sup>2</sup> 47 C.F.R. § 1.415.

<sup>3</sup> Implementation of the Cable Television Consumer Protection And Competition Act of 1992, Notice of Proposed Rulemaking, FCC 01-307, CS Docket No. 01-290 (Rel. Oct. 18, 2001).

<sup>4</sup> 47 U.S.C. §548 (c)(2)

at rates comparable to those of cable operators, which levels the playing field considerably in the multichannel video marketplace.

Without action by the Commission, the program access provision prohibiting exclusive contracts between cable operators and vertically integrated programmers will expire on October 5, 2002, ten years after the enactment of the Cable Act. Although DBS's market share has grown since the prohibition was enacted, cable still delivers multichannel video services to approximately 80 % of U.S. television households.<sup>5</sup> If the prohibition on exclusivity is not extended, it will limit the DBS operators' ability to continue to compete effectively with programming offerings provided by cable operators. This would harm the competition in the multichannel video marketplace that the Commission and Congress have labored for over a decade to foster.

When the Commission extends the exclusivity prohibition, it should also close the terrestrial distribution loophole. This "escape clause" creates an unintended and inefficient incentive for cable operators to elect terrestrial means, instead of satellites, for the distribution of certain highly desirable programming, such as regional sports networks, to cable head ends and broadcast network affiliates. This loophole artificially distorts the multichannel video distribution market to the detriment of consumers who subscribe to DBS and the satellite operators that SBCA represents.

The Commission has previously recognized the strong incentive on the part of cable operators and vertically integrated programmers to move programming to terrestrial distribution channels in order to have the option of providing such programming on an exclusive basis.<sup>6</sup> Moreover, the FCC has acknowledged its power to address the terrestrial distribution problem, promising that, if cable operators were to switch to terrestrial delivery for the purpose of evading the Commission's rules, it would "consider an appropriate response to ensure continued access to programming."<sup>7</sup>

Cable operators control the overwhelming majority of all multichannel video subscribers. Preserving the prohibition on exclusive contracts of the program access rules will allow DBS to maintain its status as a viable competitor to cable in the multichannel video marketplace. In addition, the Commission should extend the program access rules to cover the loophole in the regulations that today gives certain vertically-integrated programmer/cable companies an unwarranted incentive to select a terrestrial means of program distribution in order to circumvent the intent of the program access rules.

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<sup>5</sup> Seventh Annual Report in the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming ("2000 Report"), ¶5, CS Docket No. 00-132, FCC No. 01-1 (rel. January 8, 2001).

<sup>6</sup> Implementation of the Cable Television Consumer Protection and Competition Act of 1992, 13 FCC Rcd 15822, ¶ 71 (1998).

<sup>7</sup> 2000 Report, ¶ 182.

Ms. Magalie Roman Salas

Respectfully submitted,

Satellite Broadcasting and  
Communications Association

By: /s/ Andrew S. Wright

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